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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-868

LOUISIANA GAS SERVICE COMPANY, ET AL.,
Petitioners

versus

FEDERAL POWER COMMISSION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF LOUISIANA GAS SERVICE COMPANY

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In its Brief for the Federal Power Commission in Opposition, the Government raises the argument that United's facilties are not exempt under the Hinshaw Amendment [Section 1(c) of the Natural Gas Act, 15 U.S.C. Section 717(c)] because the Federal Power Commission has a kind of regulatory authority over natural gas pipelines which the Louisiana Public Service Commission somehow lacks under the Louisiana Constitution of 1921 (Government Brief, p. 16, fn. 11; p. 8, fn. 6). In addition to the fact that the argument advanced by the Government is insufficient to warrant denial of the petition for Writ of Certiorari, because the Court of Appeals expressly declined to base its opinion on this ground, this Court should reject the Government's argument as unsupported by the authority

which it cites. The only correct element in the Government's reasoning is its tacit admission that the relevant body of law establishing the jurisdiction of the Louisiana State Public Service Commission is the Louisiana Constitution. Article VI, Section 4 of the Louisiana Constitution of 1921 is mandatory and self-operative in its granting of jurisdiction to the Commission over all aspects of regulation of public utilities not expressly excluded by that article. This point is fully developed by Commissioner Nat B. Knight in his article *Work of the Louisiana Public Service Commission*, 16 Tulane Law Review 1 (December 1941), and constitutes the cornerstone of the Louisiana law of public utilities. The only aspect of regulation of natural gas pipelines excluded from the Commission's jurisdiction by the Constitution at present is, as stated by the Government, "any aspect of sales of natural gas direct to industrial users for fuel or for utilization in any manufacturing process * * *." This provison precludes the Commission from asserting jurisdiction over direct industrial *sales* of natural gas *to the same extent* that Section 1(b) of the Natural Gas Act, 15 U.S.C. Section 717(b), precludes the Federal Power Commission from asserting such jurisdiction for the reason that such gas is not sold for resale. *Federal Power Commission v. Louisiana Power & Light Company*, 406 U.S.621. Therefore, no lacuna exists that would justify the denial of a Hinshaw exemption to the Green System East.

The Government also advances the factual argument that a Hinshaw exemption does not lie because gas purchased by United from independent producers within Louisiana "is then transported in United's certificated interstate facilities before a portion of it is diverted for introduction into the Green System." In its Petition LGS has already pointed out the incontrovertible fact that:

> "Most of the gas contended to be injected into the Green System is said to come at Points I and J. At both points United takes gas at the tailgates of process plants (owned by Getty Oil at Point I and Humble at Point J) and runs the gas through about 93' of valves and meters, before splitting the gas into two streams, one of which goes to the interstate Black System and the other to the Green System." (LGS 10.)

It illustrated this fact by reproduction of a flow diagram of the situation at Point I at page A-98 of its Petition, which is reproduced as Appendix A herein. LGS submits that the factual assertion made by the Government quoted hereinabove cannot be sustained in the face of the diagram reproduced as Appendix A. The Government has failed to establish any possible refutation of the objections against its factual assertions. But the mere fact that the Government has deemed it necessary to go into these questions of fact constitutes a tacit admission that this matter is not one that should be disposed of without review by this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 1974 three copies of the foregoing were mailed, postage prepaid to all counsel of record for the parties in Docket Nos. 73-867, 73-868, 73-550, 73-868, 73-871, 73-872 and 73-874.

/s/ Gordon B. Castle

APPENDIX A

EXHIBIT 29